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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re COURTNEY L.,

a Person Coming Under the Juvenile  
Court Law.

B215697

(Los Angeles County  
Super. Ct. No. MJ15016)

THE PEOPLE,

Plaintiff and Respondent,

v.

COURTNEY L.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Morton  
Rochman, Judge. Affirmed.

Marta I. Stanton, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Sarah J.  
Farhat and Peggy Z. Huang, Deputy Attorneys General, for Plaintiff and Respondent.

## INTRODUCTION

The minor Courtney L. (Courtney) appeals from the juvenile court's order to remain a ward of the court and to be placed into the camp community placement program, with a maximum period of confinement not to exceed seven years. He contends the evidence is insufficient to support the findings he committed two counts of aggravated assault. We affirm.

## FACTS

### *Prosecution*

In 2008, the victim, James Anthony L. (Anthony), was 17 years old and a high school student. He had broken his right hand, which was in a cast that extended to his elbow. Anthony had a brother, James Antoine L. (Antoine), who was also 17 years old and attended the same school.

At the end of the school day on October 16, 2008, students gathered in the parking lot. Among them was Anthony. He was waiting for Antoine to finish class. Cassandra W., Courtney's mother, drove up in her sports utility vehicle. She asked Anthony if he wanted to fight Courtney, who was inside the vehicle, along with his brother Cameron. Anthony had fought with Courtney on two prior occasions and ended up in a six-month camp community placement program. This time, Anthony declined, telling Cassandra W. that after beating up Courtney twice, there was no reason to fight him again. Anthony turned and walked away.

Cassandra W. was angry. She followed Anthony in her vehicle, urging him to fight. Anthony left the parking lot and proceeded down the sidewalk. Cassandra W. continued to drive behind Anthony, before she suddenly accelerated onto the sidewalk in front of Anthony, causing him to jump back. Cassandra W. demanded that Anthony meet them down the street and drove away.

Anthony headed down the street. Behind him were about 15 other students, including his brother Antoine. The sports utility vehicle was in a parking lot. When Anthony was about 20 feet away from the vehicle, he saw Courtney and Cameron standing in front of the vehicle. The group of students followed Anthony and Antoine into the parking lot. As the other students watched, Anthony removed his glasses, and the two sets of brothers faced each other, yelling insults and preparing for a fight. Nothing else happened for a time. Antoine sought to stop the fight, pointing out that Anthony had the use of only one hand, but Cassandra W. insisted that Anthony fight her son “right now.”

Cameron retrieved a jack handle<sup>1</sup> from Cassandra W.’s vehicle and started swinging it. He ran towards Anthony and attempted to strike him with the jack handle. Anthony ran backwards to avoid getting hit by the jack handle and grabbed a skateboard from one of the students. He swung the skateboard at Cameron but did not hit him.

Courtney took the jack handle from his brother and started swinging it. Antoine grabbed another skateboard and began swinging it. Still, no one was hit. Courtney then ran toward Anthony with the jack handle. Anthony quickly backed away, threw the skateboard at Courtney and ran. Courtney immediately threw the jack handle at Anthony striking him in the mouth, cutting his lip. Anthony then ran across the street and grabbed a sign that was posted on a stick in the ground. By the time Anthony returned with the sign, Courtney and Cameron were back inside their mother’s vehicle. Anthony hit the back window with the sign. From the side, someone in the vehicle struck Anthony’s forehead, and he fell to the ground.

Stephanie Garcher, the campus security supervisor, testified she saw Courtney chase Anthony, before he picked up a jack handle and threw it. The jack handle struck Anthony in the leg, and he fell to the ground.

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<sup>1</sup> At various times throughout the proceedings, the weapon was called a jack handle, pipe, crow bar or tire iron. For clarity, we will refer to it exclusively as a jack handle.

Jeffrey Robertson, Anthony's teacher, corroborated Anthony's account of the initial confrontation between Cassandra W. and Anthony in the school parking lot and on the sidewalk.

### *Defense*

Courtney testified in his own defense that Anthony was the aggressor. According to Courtney, after school Anthony demanded that Courtney meet him around the corner so they could fight. Courtney ignored him and got into Cassandra W.'s vehicle to leave. Cameron was also in the vehicle.

When Cassandra W. began to drive away, Anthony insisted that she let him fight Courtney. Cassandra W. resisted, and Anthony threw something at her vehicle. Cassandra W. drove into a nearby parking lot to inspect her vehicle for damage. There was a mark on the back of the vehicle. Courtney looked up and saw Anthony approaching with a group of 15 students. Anthony was pulling up his pants and tightening his belt, in anticipation of the fight. As Anthony and Courtney faced each other, Antoine came up, grabbed a skateboard from one of the students, and began swinging it at Courtney, who blocked the skateboard with his arm.

To help his brother, Cameron grabbed a jack handle from Cassandra W.'s vehicle. In response, Antoine threw the skateboard and hit Cameron, before fleeing with Anthony across the street. Courtney and Cameron then got into the vehicle. Anthony found a sign, which he pulled out of the ground and threw at Cassandra W.'s vehicle. Antoine threw the skateboard at the vehicle.

Courtney denied chasing Anthony or handling the jack handle. He also claimed to have been injured by the skateboard wielded by Antoine and not thrown by Anthony. A photograph introduced into evidence depicted "some scratches" on Courtney's arm he attributed to being hit by Antoine's skateboard. On cross-examination, Courtney denied being afraid to fight Anthony. Instead, he was upset that Anthony had cursed his mother and damaged her vehicle. Courtney was ready and willing to fight Anthony.

## PROCEDURAL BACKGROUND

A petition was filed pursuant to Welfare and Institutions Code section 602 alleging then-17-year-old Courtney committed assault with a deadly weapon (a jack handle) (Pen. Code,<sup>2</sup> § 245, subd. (a)(1); count 1), assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(1); count 2), simple assault (§ 240; count 3), and disturbing the peace by fighting (§ 415, subd. (1); count 4).

After the presentation of evidence, the juvenile court listened to arguments by counsel which focused primarily on Courtney's claim he reasonably acted in self-defense to ward off being attacked by Anthony and Antoine using skateboards.

Before ruling, the juvenile court noted Courtney's mother had instigated the entire incident and had failed to report it to authorities. The court then found beyond a reasonable doubt that Courtney had committed assault with a deadly weapon as alleged in count 1, and assault by means likely to produce great bodily injury as alleged in count 2. Without making any express findings, the court rejected Courtney's affirmative defense. The court also dismissed the remaining two misdemeanor offenses, as alleged in counts 3 and 4.<sup>3</sup>

## DISCUSSION

Like those of an adult criminal proceeding, factual findings of a juvenile court are reviewed under the substantial evidence test. (*In re Rebecca R.* (2006) 143 Cal.App.4th 1426, 1430.) On appeal, "we review the whole record to determine whether *any* rational

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<sup>2</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>3</sup> The People also filed a Welfare and Institutions Code section 602 petition with similar allegations against Cameron. As a result, he and Courtney were the subjects of a joint jurisdiction hearing. The court also found beyond a reasonable doubt that Cameron had committed aggravated assault as alleged.

trier of fact could have found the essential elements of the crime or special circumstances beyond a reasonable doubt. [Citation.] The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] ‘Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]’ [Citation.] A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support”’ the jury’s verdict.” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

“All that is required to sustain a conviction of assault with a deadly weapon is proof that there was an assault, that it was with a deadly weapon, and that the defendant intended to commit a violent injury on another.” (*People v. Birch* (1969) 3 Cal.App.3d 167, 177; see § 245, subd. (a)(1).) It was undisputed that Courtney committed assault with a deadly weapon by throwing a jack handle at Anthony, striking him in the mouth. However, Courtney argues there was insufficient evidence to support the juvenile court’s finding that he was not acting in self-defense at the time.

To justify an act of self-defense for aggravated assault, the defendant must have been “‘motivated by an actual (also referred to as “genuine” or “honest”) belief or perception that (a) the defendant was in imminent danger of death or great bodily injury from an unlawful attack or threat by the victim and (b) the defendant’s acts were necessary to prevent the injury; and . . . a reasonable person in the same circumstances would have had the same perception and done the same acts.’ [Citation.]” (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1093; see also CALCRIM No. 3470.) “The threat of

bodily injury must be imminent [citation], and ‘ . . . any right of self-defense is limited to the use of such force as is reasonable under the circumstances.’” (*People v. Minifie* (1996) 13 Cal.4th 1055, 1064-1065; §§ 692, 693.) The test of reasonableness is objective; it is determined from the point of view of a reasonable person in the defendant’s position. (*People v. Humphrey, supra*, at pp. 1082-1083.)

Courtney argues his use of force was justified because it was limited to what was necessary to repel further attacks by Anthony and Antoine. This argument is without merit for several reasons. First, Courtney directed his use of force against Anthony, not against Antoine, although his own testimony painted Antoine as the primary aggressor. According to Courtney, it was Antoine, not Anthony, who escalated the conflict from an exchange of words to the use of weapons, by grabbing a skateboard and striking Courtney with it. Indeed, the only injuries Courtney supposedly suffered were purportedly caused by Antoine, not by Anthony. It was also Antoine, not Anthony, who attacked Cameron by throwing his skateboard at him.

Additionally, there is no showing Courtney reasonably feared imminent harm by Anthony at the time and used reasonable force under the circumstances. Notwithstanding his bravado while testifying, Courtney may well have honestly and reasonably been frightened at the prospect of fighting Anthony again, particularly if he had suffered injuries in their earlier fights. Indeed, the court found, it was Cassandra W. who pressured Courtney to fight Anthony, and the two sets of brothers yelled at each other for a time, apparently reluctant to throw punches. In any event, whatever fear Courtney may have felt about being injured at some point during the physical altercation, we find no evidence to suggest Courtney threw the jack handle because he reasonably feared he was in imminent danger of suffering death or serious bodily injury. Imminent harm is not that which appears to be prospective or even in the near future. (*In re Christian S.* (1994) 7 Cal.4th 768, 783.) “““An imminent peril is one that, from appearances, must be instantly dealt with.””” (*Ibid.*, italics omitted.)

Additionally, there is no evidence that in throwing the jack handle, Courtney was using reasonable force to repel an attack by Anthony. At the time Courtney threw the

jack handle, Anthony was not in a position to cause him harm. He was retreating from Courtney and no longer possessed the skateboard.

Courtney makes much of Anthony's admission to having thrown the skateboard at Courtney before Courtney threw the jack handle at him. However, it is impossible to see how a reasonable person in Courtney's position could have perceived such conduct as amounting to a threat of imminent death or serious bodily injury. First, Anthony threw the skateboard in self-defense, as Courtney was advancing on him while brandishing the jack handle. Second, the skateboard missed striking Courtney. Third, immediately after throwing the skateboard, Anthony started running across the street, when he was struck by the jack hammer. Under the circumstances, Courtney's use of force was excessive to whatever threat of harm he perceived from Anthony. The use of excessive force destroys the justification of self-defense. (*People v. Hardin* (2000) 85 Cal.App.4th 625, 629-630.) Substantial evidence supports the juvenile court's finding.

### **DISPOSITION**

The order is affirmed.

JACKSON, J.

We concur:

WOODS, Acting P. J.

ZELON, J.